

The CMS has Issued a Memorandum

Outlining New Guidelines for Nursing

Homes

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COVID-19 has brought uncertainty and fear into the lives of Americans and the world, and we have seen the country come to a screeching halt in order to slow the spread of this novel coronavirus. Due to the overwhelming increase in COVID-19 infections in long-term care facilities throughout the United States, the Center for Medicare and Medicaid Services (CMS), which is responsible for ensuring the health and safety of nursing home residents, recently issued a memorandum outlining new guidelines for nursing homes to help control and prevent the spread of the disease. The CMS is working hand-in-hand with the Center for Disease Control (CDC) to provide nursing homes with guidance how to keep residents safe.

The CMS is reinforcing existing reporting requirements in order to ensure appropriate tracking, response and mitigation of COVID-19 in nursing homes. Presently, under the Code of Federal Regulations at 42 CFR 483.80, nursing home facilities are required to establish and maintain an infection prevention and control program that includes a system of surveillance designed to identify possible communicable diseases or infections to prevent the spread to other persons in the facility. Nursing homes are also required to know when and whom to report possible incidents of communicable diseases or infections. 42 CFR 483.80 requirements and CDC guidance also mandate that nursing homes notifying State or Local health departments regarding residents or staff with suspected or confirmed COVID-19 infections, residents with severe respiratory infection resulting in hospitalization or death, or more than three residents or staff with new-onset respiratory symptoms within 72 hours of each other.

Currently, the CMS, CDC, and Federal Emergency Management Agency (FEMA) do not collect data related to COVID-19 and respiratory infections or symptoms. However, in light of Covid-19, nursing homes will be provided specific direction from the CMS and CDC on standard formatting and frequency for reporting this information through the CDC's National Health Safety Network (NHSN) system. This new reporting requirement is intended to help support the monitoring of COVID-19 locally and nationally, track trends in infection rates, and inform public health policies and actions.

In addition to the new requirement of reporting information to the CMS and CDC through the NHSN system, the CMC will begin requiring notification to residents and their representatives of the conditions inside of facilities. Nursing homes will be obligated to share this information directly to residents and their representatives within 12 hours of an occurrence of a single confirmed infection of COVID-19, or when three or more residents or staff with a new-onset of respiratory symptoms occurs within 72 hours. Additionally, facilities will further be required to provide updates weekly, or each subsequent time there is a confirmed infection of COVID-19 identified, and/or whenever three or more residents or staff with new onset of respiratory symptoms occurs within 72 hours. The information provided by facilities must include information on mitigating action in place to prevent or reduce the risk of transmission. This may include whether or not normal operations in the nursing home will be altered.

Failure to report resident or staff incidences of any communicable disease or infection, including COVID-19 or to provide timely notification to residents and their representatives of these incidents, will result in an enforcement action against the non-compliant nursing home by the CMS. It should be noted, that the CMS will be issuing rulemaking following the memorandum outlining the new reporting requirements. In the meantime, facilities can get a head start on implementing the forthcoming requirements and making sure they will be in compliance.